

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA**

**v.**

**5:08-CR-240  
(FJS)**

**CHARLES VEJVODA, JR.,**

**Defendant.**

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**APPEARANCES**

**OF COUNSEL**

**OFFICE OF THE UNITED  
STATES ATTORNEY**

James Hanley Federal Building &  
U.S. Courthouse  
100 South Clinton Street  
P.O. Box 7198  
Syracuse, New York 13261-7198  
Attorneys for the United States

**MICHAEL OLMSTED, AUSA**

**OFFICE OF THE FEDERAL  
PUBLIC DEFENDER**

The Clinton Exchange, 3rd Floor  
4 Clinton Square  
Syracuse, New York 13202  
Attorneys for Defendant

**MELISSA A. TUOHEY, AFPD**

**SCULLIN, Senior Judge**

**ORDER**

On May 30, 2008, the Government filed a motion for a hearing to determine Defendant's mental competency pursuant to 18 U.S.C. § 4241(a). *See* Dkt. No. 8. The Government based its motion on Defendant's long history of addiction and mental illness, as well as his conduct when he was arrested and held in the Eastern District of New York. In a letter dated June 3, 2008, Defendant's counsel stated that her client did not oppose the Government's motion. *See* Dkt. No.

10. Based upon his observations of Defendant's behavior at his initial appearance, Defendant's history, the Government's motion, and Defendant's consent, Magistrate Judge DiBianco granted the motion. *See* Dkt. No. 11.

Defendant underwent a mental examination, pursuant to 18 U.S.C. § 4241(b), at the Metropolitan Correctional Center in New York City. On July 17, 2008, Psychologist Dr. Elissa Miller issued a report of her examination of Defendant. After receiving the report, Magistrate Judge DiBianco held a hearing to assess Defendant's competency pursuant to 18 U.S.C. § 4247(d). At the end of the hearing, Magistrate Judge DiBianco found that, based on Dr. Miller's testimony, her report, and Defendant's behavior in Court and at the detention facility, Defendant was not currently competent to stand trial. *See* Report-Recommendation at 8. He also noted that he based his finding primarily on Defendant's inability to assist properly in his defense. *See id.* Therefore, he recommended that this Court find Defendant incompetent to stand trial.<sup>1</sup> *See id.* at 9.

After reviewing the entire file in this matter and the applicable law, the Court hereby **ORDERS** that Magistrate Judge DiBianco's September 9, 2008 Report-Recommendation is **ADOPTED** in its entirety, including his finding that Defendant is incompetent to stand trial at this time, for the reasons stated therein; and the Court further

**ORDERS** that Defendant is entrusted to the custody of the Attorney General, pursuant to 18 U.S.C. § 4241(d), for hospitalization for treatment in a suitable facility for a duration not to exceed four months to determine whether there is a substantial probability that, in the foreseeable

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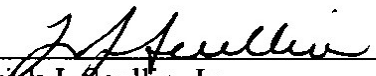
<sup>1</sup> The Government submitted a letter noting its agreement with Magistrate Judge DiBianco's recommendation. *See* Dkt. No. 15. Defendant did not file any papers in response to Magistrate Judge DiBianco's recommendation.

future, Defendant will attain the capacity to permit the proceedings to go forward; and the Court further

**ORDERS** that, at the conclusion of the above-ordered hospitalization and treatment period, the Attorney General shall return Defendant to the custody of the United States Marshal, who shall then bring Defendant back before the Court for re-examination of his competency pursuant to statute.

**IT IS SO ORDERED.**

Dated: October 3, 2008  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge